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Sprinkel, Treasurer of City of Harrisonburg. Writ denied, and petitioner brings error and supersedeas. Mandamus awarded.

John Paul, John W. Morrison, and Chas. A. Hammer, all of Harrisonburg, for plaintiff in error.

H. W. Bertram, of Harrisonburg, for defendant in error.

VIRGINIA WHOLESALE CO., Inc., *v.* TOWN
OF APPALACHIA et al.

Sept. 22, 1921.

[108 S. E. 660.]

Municipal Corporations (§ 966 (1)*)—Towns Held to Have Statutory Authority to Impose Ad Valorem Town Tax on Capital of Merchants.—Code 1904, § 1043, as amended and reenacted by Acts 1915, c. 111, not having been affected in that respect by the Segregation Act of 1915, held to authorize a town to impose a local ad valorem property tax on the capital of merchants employed in the town; such capital being intangible personal property taxable under the general power of taxation.

Error to Circuit Court, Wise County.

Proceeding by the Virginia Wholesale Company, Inc., against the Town of Appalachia and others for refunding of an ad valorem tax and penalty. An order denying relief was entered, and plaintiff brings error. Affirmed.

Bullitt & Chalkley, of Big Stone Gap, for plaintiff in error.

Morton & Parker, of Appalachia, for defendant in error.

PHLEGAR'S EX'R *v.* SMITH et al.

Sept. 22, 1921.

[108 S. E. 662.]

1. Limitation of Actions (§ 44 (5)*)—Action to Enforce Trust Deed Securing Bond for Loan Barred 20 Years after Maturity of Bond.—A suit to enforce a trust deed securing a bond for payment in five years of a loan of a trust fund was barred 20 years after maturity of the bond, though the maker was also the assignee of the interest on such fund during the lifetime of his assignor.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 403, 405.]

2. Life Estates (§ 21*)—Holder of Life Estate in Interest on Fund from Sale of Lands Cannot Set Off Value Thereof in Action on Trust Deed Securing Bond for Borrowed Principal.—An assignee of the interest for assignor's lifetime on a trust fund, realized from the sale

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of lands, who borrowed the principal and executed a bond and trust deed to secure payment within five years, could not, if sued on the deed, set off the present value of such life estate; one having a life estate in a fund arising from proceeds of the sale of land not being entitled to have the value thereof commuted and paid in gross instead of annual interest on the fund, unless the parties so agree.

3. Limitation of Actions (§ 104½*)—New, Vol. 6 Key-No. Series—Set-Off Does Not Prevent Statute from Running on Principal Demand.—The existence of a set-off does not prevent the statute from running on the principal demand.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 429.]

4. Mortgagees (§ 424*)—Though Money from Sale of Decedent's Lands Treated as Real Estate, Limitations Applicable to Action to Enforce Trust Deed Securing Loan Thereof to Assignee of Interest Thereon for Assignor's Life.—Though money realized from the sale of a decedent's land must be treated as real estate, the statute was applicable to an action to enforce a trust deed securing a bond for the loan of such funds to the assignee of the interest thereon for assignor's lifetime.

Appeal from Circuit Court, Montgomery County.

Suit by Archer A. Phlegar's executor against A. B. Smith and others. Decree for defendants, and complainant appeals. Affirmed.

POWERS *v.* LONG et al.

Sept. 22, 1921.

[108 S. E. 664.]

1. Trusts (§ 44 (1)*)—Evidence Insufficient to Establish Parol Trust in Land.—In a suit to establish a parol trust in land conveyed by the father of the parties to respondent under an alleged agreement to reconvey to complainants, evidence held insufficient to establish the trust.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 290.]

2. Trusts (§ 44 (3)*)—Proof Required to Establish Parol Trust in Land Stated.—To establish a parol trust in land, the declaration must be shown to be unequivocal and explicit, and established by clear and convincing testimony.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 290.]

Appeal from Circuit Court, Dickenson County.

Bill by Cotella Long and another against E. M. Powers. From the decree, defendant appeals, and appellees assign cross-error. Reversed and dismissed.

S. H. & G. C. Sutherland, of Clintwood, for appellant.

Chase & McCoy, of Clintwood, *D. H. Kennedy*, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.